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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,560	05/15/2001	Hans Berger	66376-252-7	8137

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EXAMINER

LANEAU, RONALD

ART UNIT PAPER NUMBER

3627

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/854,560

Applicant(s)

BERGER ET AL.

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/18/05 has been entered.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 19, 20, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al (US 5,305,199).

Lobiondo discloses a method for automation of the management of operating materials and/or supplies of an analyzer or analyzing system for determining a parameter or a parameter group of a sample, being used in medical, environmental or food technology, said operating materials being tagged as to types and maximum useful lives and said required supplies being as to types, expiry dates and quantities, comprising: a) automatically detecting and recording said types and maximum useful lives of said required operating materials, and said types, expiry dates and quantities of said required supplies (col. 3, lines 51-58, col. 4, lines 39-49), b) entering a desired frequency of analysis, or automatic calculation of an estimated frequency of analysis

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from past frequencies of use of said analyzer or analyzing system (see fig. 3, projected usage), c) automatically calculating an amount of said operating materials and/or supplies required per unit of time, based on data obtained in steps (a) and (b) (col. 3, line 67 to col. 4, line 4), d) determining an optimum point in time for ordering more of said required operating materials and/or supplies, taking into account the maximum useful lives of said required operating materials, the expiry dates and quantities of said required supplies (col. 4, lines 4-9, 39-49), e) automatically ordering of said operating materials and/or supplies via a device for remote data transmission (col. 4, lines 17-23). Furthermore, Lobiondo discloses a method wherein said operating materials and/or supplies are ordered via an internet connection and wherein said unit for remote data transmission is used to provide an internet portal for information on products, software, service, maintenance, and use, in the fields of medical and food technology (col. 3, lines 16-31). Lobiondo does not explicitly disclose an automatic detecting and recording, automatically calculating an amount but it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Rundell, 18 CCPA 1290, 48 F. 2d 958, 9 USPQ 220.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an automatic means for something mechanical or manual because it would provide a faster approach of determining the expiry date and quantities of sample up for replacement.

4. Claims 5-18 and 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al (US 5,305,199) in view of Sano et al (US 5,415,840).

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Lobiondo et al further teach updating information on product using a software, expected delivery and shipment information that can be transmitted via a link (col. 3, lines 20-24 and 42-46).

Lobiondo et al do not teach an analyzing system for determining medical sample parameters but Sano et al teach a system for determining medical sample wherein said connection for remote data transmission is provided in a computer central unit of said analyzing system (fig. 1), the analyzer is coupled to the central unit as claimed and can be removed to be inserted in a different position.(col. 4, lines 42-48), said analyzing system is capable of being provided with a sample bus to exchange the samples to be tested between the analyzer and the control unit (col. 4, lines 1-13).

Neither Lobiondo et al nor Sano et al expressly teach exchanging washing, calibrating and quality control media between analyzer and the control unit but this feature is obvious in the medical field because the system as taught by Sano et al intrinsically would have to do at least some washing, calibrating and quality control media in order to have any kind of exchange between these two elements and also to ensure the reliability of the equipment in use to perform a certain test.

It would have been obvious to one of ordinary skill in the art to utilize the automatic analyzer as taught by Sano et al into the system of Lobiondo et al because it would enable measurement to be performed with simple mechanisms and good reproducibility.

***Response to Arguments***

5. Applicant's arguments filed on 10/18/05 have been fully considered but they are not persuasive.

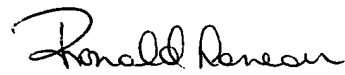
Applicant argues that there is no hint or any suggestion in LoBiondo for automatic recording maximum useful life of hardware components of the printer or of recording expiry data of any supplies or operating materials. In response to Applicant's arguments, a new rejection under 103 is being used in order to address the "automatic" issue the Applicant mentions. Furthermore, Applicant argues that Lobiondo does not show a step of calculating a frequency of analysis and contrary to Applicant's arguments, fig. 3 of Lobiondo shows a projected usage that can be determined by calculating the frequency analysis as claimed. Applicant's arguments about Sano not disclosing automatic recording of type and maximum useful life of operating materials used, and of types, expiry dates and quantities are moot in view of Lobiondo (see rejection above). Applicant's arguments are deemed unpersuasive, claims 1-32 remain rejected.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on Mon-Fri from 8:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ronald Laneau  
Examiner  
Art Unit 3627

11/28/05

rl